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In the Supreme Court of the United States

OCTOBER TERM, 1985

SANTANO CORONEL-QUINTANA, A/K/A
SANTANA CORONEL-QUINTANA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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8 pp

TABLE OF AUTHORITIES

Page

Cases:

Morris v. *Slappy*, 461 U.S. 1 4

Roviaro v. *United States*, 353 U.S. 53 4

United States v. *Hyatt*, 565 F.2d 229 4

United States v. *Little*, 567 F.2d 346, cert. denied, 435 U.S. 969 2

Statutes:

18 U.S.C. 2 2

18 U.S.C. 924(c)(2) 2

21 U.S.C. 841(a)(1) 2

21 U.S.C. 846 2

28 U.S.C. 1827(d) 2

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Petitioner contends that the court of appeals erred in upholding his conviction on heroin and firearm charges, arguing that voir dire proceedings should have been translated in their entirety into Spanish, that a continuance should have been granted when petitioner discovered that the tape recording of a preliminary hearing was unintelligible, and that the prosecution improperly failed to disclose the identity of a confidential informant.

1. The evidence at petitioner's trial in the United States District Court for the District of North Dakota showed that two of petitioner's brothers and a third person agreed to sell about half a pound of heroin to federal and state drug enforcement agents in North Dakota. Petitioner and another brother transported the heroin from California to a hotel in North Dakota; the heroin was exchanged in one location while money was exchanged elsewhere. The drug

enforcement agents testified that petitioner kept them under surveillance at the hotel. Pet. App. A4-A5, A26-A30.

A jury convicted petitioner on one count of conspiring to distribute heroin, in violation of 21 U.S.C. 846, one count of distributing heroin, in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2, and one count of carrying a firearm during the commission of a felony, in violation of 18 U.S.C. 924(c)(2). He was sentenced to concurrent terms of 15 years' imprisonment on the conspiracy and distribution counts and five years' imprisonment on the firearm count. Petitioner was also sentenced to a three-year special parole term on the distribution count.

2. The Eighth Circuit rejected each of the contentions raised in the petition. With respect to petitioner's argument that the district court erred in denying his motion to have the entire voir dire translated into Spanish, the court of appeals noted that petitioner requested interpretation of the voir dire because he had once lived in the area from which the venire panel was selected and wanted to be able to confer with counsel concerning individuals he recognized or who might know him (Pet. App. A22-A23). Pursuant to 28 U.S.C. 1827(d), the district court provided an interpreter, who was seated at the defendant's table throughout the voir dire and available to assist if needed, but it did not take the further step of ordering translation of the entire proceeding. The court of appeals, recognizing that the decision respecting translation is committed to the broad discretion of the trial court, concluded that there was in these circumstances "no abuse of discretion in [the district court's] refusal to translate the entire voir dire proceeding into Spanish" (Pet. App. A23).

The court of appeals also held that, under the factors listed in *United States* v. *Little*, 567 F.2d 346, 348-349 (8th Cir. 1977), cert. denied, 435 U.S. 969 (1978), the district

court did not abuse its discretion by refusing to grant a continuance when petitioner discovered, shortly before trial, that the tape recording of a preliminary hearing was unintelligible (Pet. App. A5-A8). Petitioner contended that, as a result, he was deprived of his right to cross-examine one of the government's witnesses, who identified petitioner as the source of the heroin at trial but appeared to be unaware of the source of the heroin at the preliminary hearing (Pet. App. A5-A6). The court of appeals stated that "[a] continuance would not have solved the problem of the discrepant testimony because the tapes were simply unintelligible" (*id.* at A7). In addition, since petitioner's counsel were at the preliminary hearing, they could have cross-examined the witness concerning the discrepancy, "yet they failed to do so" (*id.* at A8).

The court of appeals also rejected petitioner's claim that he was denied due process because his motion for disclosure of the identity of a confidential informant was denied, which limited his ability to develop an entrapment defense (Pet. App. A8-A10). The court of appeals stated that "[i]t is clear from the record that the defendants knew the informant's name" and "could have subpoenaed him if they believed he had evidence that would have exonerated them" (*id.* at A9, A10). Therefore, the court concluded, petitioner "suffered no prejudice" (*id.* at A10).

3. The court of appeals correctly decided each of the issues petitioner raises. Petitioner does not suggest that there is a conflict in the circuits on any issue, and there is no other reason for this Court to consider his contentions.

Petitioner contends (Pet. 4-7) that his motion for translation of the entire voir dire proceedings should have been granted. Petitioner does not respond to the court of appeals' conclusion that his interests were adequately protected in the circumstances by having an interpreter at the defense

table throughout the voir dire, let alone specify how he was prejudiced by the procedure ordered by the district court. There is no doubt that decisions regarding translation of proceedings are committed to the discretion of the district courts, and the case-specific question of the soundness of its exercise of discretion here plainly does not merit further review.

Petitioner alleges in conclusory fashion (Pet. 7-10) that his due process rights were violated because his defense would have been strengthened if the district court had granted a continuance so that he could study the tape recording of the preliminary hearing. But he does not claim that additional time would have allowed him to salvage anything in particular from the tapes, which the court of appeals described as unintelligible (Pet. App. A7). Nor does counsel explain why the government witness who allegedly gave inconsistent testimony could not have been impeached by his testimony at the preliminary hearing, despite the absence of an intelligible tape recording, since defense counsel were present at that hearing. Under these circumstances, it is clear that the district court did not abuse its "broad discretion" (*Morris* v. *Slappy*, 461 U.S. 1, 11 (1983)) in denying the continuance, and there is no warrant for further review of this issue.

Petitioner's claim (Pet. 10-14) that a new trial is required because the government did not disclose the confidential informant's identity totally lacks merit. Petitioner admits that he learned the informant's identity before trial (Pet. 11-12), so any error in failing to disclose the informant's identity could not have been prejudicial. *United States* v. *Hyatt*, 565 F.2d 229, 231-232 (2d Cir. 1977); see *Roviaro* v. *United States*, 353 U.S. 53, 60 n.8 (1957). As the court of appeals concluded, petitioner could have subpoenaed the

informant if he thought that the informant's testimony would be useful.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

AUGUST 1985

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[1]Similarly, petitioner's claim (Pet. 12-13) that the government's failure to disclose the informant's identity led to the introduction into evidence of statements of the informant over petitioner's hearsay objections makes no sense in this case, since petitioner knew who the informant was. Whatever the merits of petitioner's hearsay objections — which he has not raised in his petition and did not raise in the court of appeals — the alleged improper admission of hearsay was not caused by the government's failure to identify the informant.